

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
BILLINGS DIV.

2011 JUL 8 PM 12 28

PATRICK E. DUFFY, CLERK
BY

DEPUTY CLERK

UNITED STATES OF AMERICA,

Cause No. CR 10-45-BLG-RFC

Plaintiff/Respondent,

vs.

ERIC JAMES SCHULTZ,

ORDER DENYING MOTION
TO AMEND AND DENYING
CERTIFICATE OF APPEALABILITY

Defendant/Movant.

Defendant/Movant Eric Schultz's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 was denied on June 30, 2011. A certificate of appealability was denied the same day. On July 1, 2011, Schultz filed a motion to amend or supplement his motion. Mot. to Amend (*doc. 52*) at 14; *Houston v. Lack*, 487 U.S. 266, 270-71 (1988). Schultz is a federal prisoner proceeding pro se.

Schultz says:

The Movant believed these were good companies and the investment was reasonably secure, he was willing to put his own livelihood, good name, good credit and company on the line. The Movant had every good faith intention for the investment programs to be successful, for he would be most vulnerable and have the most to lose if they, in fact, were not.

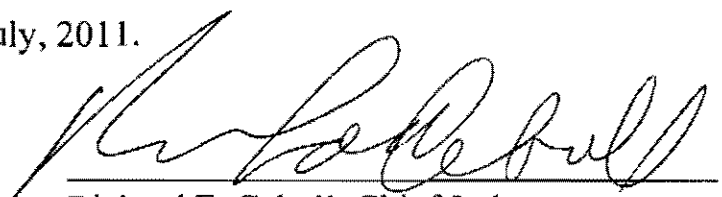
Mot. to Amend (*doc. 52*) at 7.

Schultz was convicted of wire fraud and money laundering because he obtained money from investors by telling them he would invest all of it. In fact, he had no intention of investing all of it, and he did not invest all of it. Schultz lied to his investors to obtain their money, knowing full well he intended to use most of their money for his own purposes. His claim that he thought they would earn a return on the small portion of their money he invested does not exonerate him even if it is true. None of the allegations or authorities in the motion to amend is pertinent to this case. Amendment would be futile. The motion is denied. Rule 12, Rules Governing § 2255 Proceedings; *Mayle v. Felix*, 545 U.S. 644, 654-55 (2005); *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 & n.1 (9th Cir. 2009).

A certificate of appealability is denied. Schultz's motion to amend is irrelevant and so fails to make a substantial showing that he was deprived of a constitutional right. 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS HEREBY ORDERED that Schultz's motion to amend (*doc.* 52) is DENIED and a certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Schultz files a Notice of Appeal.

DATED this 8th day of July, 2011.

A handwritten signature in black ink, appearing to read "Richard F. Cebull", written over a horizontal line.

Richard F. Cebull, Chief Judge
United States District Court